

CHAPTER 5  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The real estate commission adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first Volume of the Iowa Administrative Code.

**193E—5.1(17A,22) Definitions.** As used in this chapter:  
“Agency” means the real estate commission.

**193E—5.3(17A,22) Requests for access to records.**

**5.3(1) Location of record.** In lieu of the words “(insert agency head)” insert “executive secretary”. In lieu of the words “(insert agency name and address)” insert “Real Estate Commission, 1918 S.E. Hulsizer, Ankeny, Iowa 50021”.

**5.3(2) Office hours.** In lieu of the words “(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)” insert “8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays”.

**5.3(7) Fees.**

*c. Supervisory fee.* In lieu of the words “(specify time period)” insert “one-half hour”.

**193E—5.7(17A,22) Consent to disclosure by the subject of a confidential record.** Amend 5.7(17A,22) by adding the following sentence at the end: “This rule does not allow the subject of a record which is confidential under Iowa Code section 272C.6(4) to consent to its release.”

**193E—5.9(17A,22) Disclosures without the consent of the subject.**

**5.9(1)** Open records are routinely disclosed without the consent of the subject.

**5.9(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in rule 5.10(17A,22) or in the notice for a particular record system.
- b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.
- e.* To the legislative fiscal bureau under Iowa Code section 2.52.
- f.* Disclosures in the course of employee disciplinary proceedings.
- g.* In response to a court order or subpoena.

**193E—5.10(17A,22) Routine use.**

**5.10(1)** Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

**5.10(2)** To the extent allowed by law, the following uses are considered routine uses of all agency records:

*a.* Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.

*b.* Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

*c.* Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

*d.* Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

*e.* Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

*f.* Any disclosure specifically authorized by the statute under which the record was collected or maintained.

*g.* Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlements filed in licensee disciplinary proceedings.

*h.* Transmittal to the district court of the record in a disciplinary hearing, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

*i.* Name, address and license number of real estate licensees, licensure history, and status of license are routinely disclosed to the public upon request.

**193E—5.11(17A,22) Consensual disclosure of confidential records.**

**5.11(1)** *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 5.7(17A,22).

**5.11(2)** *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official’s intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

**193E—5.12(17A,22) Release to subject.**

**5.12(1)** The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 5.6(17A,22). However, the agency need not release the following records to the subject:

*a.* The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

*b.* Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

*c.* Peace officers’ investigative reports may be withheld from the subject, except as required by the Iowa Code. Iowa Code section 22.7(5)

d. All information in complaint and investigation files maintained by the commission for purposes of licensee discipline is required to be withheld from the subject prior to the filing of formal charges.

e. As otherwise authorized by law.

**5.12(2)** Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

**193E—5.13(17A,22,543B) Availability of records.**

**5.13(1) General.** Agency records are open for public inspection and copying unless otherwise provided by rule or law.

**5.13(2) Confidential records.** The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Personal related information in confidential personnel records of real estate licensees or applicants for a real estate license. Iowa Code section 22.7(11)

b. All information in complaint and investigation files maintained by the agency for purposes of licensee discipline is confidential in accordance with Iowa Code section 272C.6(4), except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges.

c. The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1) is confidential under Iowa Code section 21.5(4). However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(6) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders.

d. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination. Information relating to an individual's examination results is confidential unless the individual authorizes release. Iowa Code section 543B.52

e. Criminal history or prior misconduct of an applicant for licensure. Iowa Code section 543B.52

f. Information relating to the contents of an examination for licensure. Iowa Code section 543B.52

g. Minutes of closed meetings of the agency. Iowa Code section 21.5(4)

h. Records which are exempt from disclosure under Iowa Code section 22.7.

i. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)"d."

j. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, making inspections, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

Iowa Code sections 17A.2, 17A.3

k. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

l. Any other records made confidential by law.

**5.13(3) Authority to release confidential records.** The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 5.4(17A,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

**193E—5.14(17A,22) Personally identifiable information.** This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 5.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information. All records are stored on paper only unless otherwise indicated. The record systems maintained by the agency are:

**5.14(1)** Information in complaint and investigation files maintained by the agency for purposes of licensee discipline. This information is required to be kept confidential pursuant to Iowa Code section 272C.6(4). However, it may be released to the licensee once a disciplinary proceeding is commenced by the filing of formal charges and the notice of hearing.

**5.14(2)** Information on nonlicensee investigation files maintained by the agency. This information is a public record except to the extent that certain information may be exempt from disclosure under Iowa Code section 22.7 or other provision of law.

**5.14(3)** Trust account records obtained under the authority of Iowa Code section 543B.46. This includes consents to audit trust accounts, trust account examination reports and examiner exit interview reports, and correspondence in regard to trust accounts.

**5.14(4)** The following information in regard to licensee disciplinary proceedings:

- a. Formal charges and notices of hearing.
- b. Complete records of open disciplinary hearings. If a hearing is closed pursuant to Iowa Code section 272C.6(1), the record is confidential under Iowa Code section 21.5(4).
- c. Final written decisions imposing sanctions, including informal stipulations and settlements. This information is indexed and made available for public inspection in accordance with Iowa Code section 17A.3(1)“d.”

**5.14(5)** Licensure. Records pertaining to licensure by examination may include:

- a. Registration for examination. Information gathered includes name, address, telephone numbers, social security number (optional). This information is collected pursuant to Iowa Code section 543B.20.
- b. Examination roster, pass rosters and fail rosters. The pass and fail rosters contain a statistical breakdown of the individual's examination results. This information is collected pursuant to Iowa Code section 543B.20.
- c. Application for license. Information gathered includes name, address, telephone number, licensure history, employment history, criminal history, references and optional biographical data including social security number, birth date, and designation of sex. The application must be signed by an employing broker if the application is for a salesperson or broker associate license, and the application must be acknowledged by the applicant. Attached to the application are the examination score report and evidence of prelicense course completion. This information is collected pursuant to Iowa Code section 543B.15. Only the applicant's name and address are transferred to an automated data processing system.

**5.14(6)** An application for license by reciprocity will contain the following additional information:

*a.* Verification of licensure and disciplinary action taken by another real estate licensing board. This information is collected pursuant to Iowa Code section 543B.21.

*b.* An irrevocable consent that suits and actions may be commenced against the applicant in a court in Iowa. This information is collected pursuant to Iowa Code section 543B.23.

**5.14(7)** Licensure by renewal or reinstatement. Records are stored on paper and a data processing system.

*a.* Applications for renewal of license contain computer printed data from the applicant's current licensure record to be verified or changed as appropriate. This information is collected pursuant to Iowa Code section 543B.28.

*b.* Continuing education proofs of attendance are submitted with the application for renewal. This information is collected pursuant to Iowa Code section 272C.2.

**193E—5.15(17A,22) Other groups of records.** This rule describes groups of records maintained by the agency other than record systems as defined in rule 5.1(17A,22). These records are generally available to the public. However, the agency's files of these records may contain confidential information as discussed in subrule 5.13(2). In addition, the records listed in subrules 5.15(1) to 5.15(4) may contain information about individuals. All records are stored on paper only unless otherwise noted. Unless otherwise stated, the authority to maintain the record is provided by Iowa Code chapters 543B and 272C.

**5.15(1)** Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4.

**5.15(2)** Agency records. Agendas, minutes, and materials presented to the commission members in preparation for commission meetings are available from the office, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. These records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3.

**5.15(3)** Publications. News releases, annual reports, project reports, agency newsletters, etc., are available from the executive secretary's office. Information concerning examinations and licensing is available from the agency office. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of the agency or committees.

**5.15(4)** Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public as provided by law. Information may be confidential under subrule 5.13(2), paragraphs "b" and "c." These records may contain information about individuals collected under the authority of Iowa Code section 543B.34.

**5.15(5)** Policy manuals. The agency employees' manual, containing certain policies and procedures for programs administered by the agency, is available in the office of the agency. Policy manuals do not contain information about individuals.

**5.15(6)** General correspondence, reciprocity agreements with other states, and cooperative agreements with other agencies.

**5.15(7)** Administrative records. This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

**5.15(8)** Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files may include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code sections 22.7(11) and 22.7(18).

**5.15(9)** Subdivided land filings and related correspondence collected pursuant to Iowa Code chapter 543C.

**5.15(10)** Time-share filings and related correspondence collected pursuant to Iowa Code chapter 557A.

**5.15(11)** All other records that are not confidential by law.

**193E—5.16(17A,22) Data processing systems.** None of the data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

**193E—5.17(17A,22) Applicability.** This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivision thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of the records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

**193E—5.18(17A,22,252J) Sharing of information with the child support recovery unit of the department of human services.** Notwithstanding any statutory confidentiality provision, the commission may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J or 598.

**193E—5.19(77GA,ch1081) Sharing of information with the college student aid commission.** Notwithstanding any statutory confidentiality provision, the commission may share information with the college student aid commission for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 261 as amended by 1998 Iowa Acts, chapter 1081.

These rules are intended to implement Iowa Code chapters 17A, 22, and 252J and chapter 261 as amended by 1998 Iowa Acts, chapter 1081.

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